

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RONALD KELLY,

Plaintiff,

vs.

**BNFOCUS 3D TRUCKING, LLC and
JERRY GRAVES,**

Defendants.

Civil Action No. 1:20-cv-2781-WMR

DECLARATION OF MATTHEW W. HERRINGTON

Attorney Matthew W. Herrington hereby submits his declaration, pursuant to 28 U.S.C. § 1746, in support of Plaintiff Ronald Kelly's Motion for Attorney's Fees and Costs of Litigation.

1.

My name is Matthew W. Herrington. I am over the age of twenty-one (21) and suffer from no legal disabilities. I make the following Declaration based on my personal knowledge as well as the contemporaneous business records of my firm.

2.

I have been practicing law since my graduation, *cum laude*, from the University of Georgia School of Law in 2013. I am admitted in all state courts in Georgia, the

United States District Court for the Northern, Middle, and Southern Districts of Georgia, as well as the United States Court of Appeals for the Eleventh Circuit. I have practiced employment law—primarily Fair Labor Standards Act litigation—since approximately October 2013, primarily in the Atlanta metropolitan area but also throughout the state of Georgia. I have been an invited presenter at a CLE session organized by the Georgia chapter of the National Employment Lawyers Association. I have served as counsel in over 100 FLSA cases, including several collective actions.

3.

I, together with Attorney Jack Spradley, have represented the Plaintiff in this action since June 2020. I had primarily responsible for drafting pleadings and motions and conducting settlement negotiations. I briefly consulted attorney Charles R. Bridgers on several occasions.

4.

Our firm has a practice of keeping contemporaneous time and expense records as part of our regular business activity. Individual slips (or records of activities and costs) are created by persons with knowledge of the activities described. The information is tracked in Timeslips, our time and billing software. A true and correct copy of the firms billing records for fees is attached hereto as Exhibit “A”.

A true and correct copy of the firm's billing records for costs is attached hereto as Exhibit "B". These records are an accurate representation of the time, effort, and costs incurred in prosecuting this matter.

5.

As of September 22, 2020, our firm has tracked and incurred \$7,209.25 in attorney fees (see Attachment A) and \$575 in expenses (see Attachment B) in prosecuting this action, for a total of \$7,684.25. After reviewing the billing records and exercising my billing judgment, I decided not to seek 0.6 hours of my own time (\$210) relating to Mr. Spradley's admission to this Court and to revision of the format of the Certificate of Interested Persons because I deemed them to be likely outside the scope of fees properly recoverable under 29 U.S.C. § 216(b).

6.

Additionally, a significant amount of my own time at the outset of this case spent communicating with Attorney Spradley was not recorded and fees for that time are not being sought.

7.

Based on my experience in litigating labor and employment claims including those arising under the FLSA, I am familiar with the hourly rates charged by other civil rights and labor and employment attorneys (and their staffs), including attorneys

who represent primarily plaintiffs and attorneys who represent primarily employers.

8.

My hourly rate of \$350 per hour is reasonable and in line with the rates charged by other attorneys in the Atlanta area who possess similar skill, experience and training. I now charge most of my new clients \$350 per hour whether paid hourly or on a contingency fee basis. This is a modest increase from my previous rate of \$325, which had remained unchanged for two years until January 1, 2020. My current \$350 per hour rate has been approved by this Court, most recently in *Ogier v. M-Entertainment Properties, LLC, et al.*, 1:19-cv-372-TWT, Dkt. 50 (N.D. Ga. May 15, 2020); *Jackson et al. v. American Disposal Service of Georgia, Inc.*, 1:19-cv-4428-AT, Dkt. 33 (N.D. Ga. July 30, 2020).

9.

Based on my experience and training, I possess the requisite skills and knowledge to adequately represent my client and to offer my professional opinion concerning the reasonableness of the number of hours expended in this case and the reasonableness of the hourly rates sought to be recovered.

10.

The expenses and the effort incurred were reasonable to prosecute this matter and to obtain an excellent result for the Plaintiff. As demonstrated in attachments to this declaration, none of the hours expended by counsel or staff has been “excessive,” “redundant” or “unnecessary.” To the contrary, at every opportunity, Plaintiffs’ attorneys attempted to economize and to minimize expenses. As the Court will note, our staff members bill at different rates depending on their experience level. We attempt to assign tasks to the appropriate person to reduce the overall bill.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of September 2020.

s/ Matthew W. Herrington
Matthew W. Herrington
Georgia Bar No. 275411

ATTACHMENT A

Selection Criteria

Slip.Slip Type
Clie.Selection Time
Include: Kelly, Ronald

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description	TIME	Timekeeper Activity Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
143527 6/15/2020 WIP Research on compensable time issue; communication with co-counsel re: client intake and fee issues	M. Herrington Research-Legal Kelly, Ronald	1.60 0.00	350.00 T@1		560.00
143529 6/15/2020 WIP Call with client to discuss intake issues; prepare retainer and client info. sheet	M. Herrington ClientComm Kelly, Ronald	0.70 0.00	350.00 T@1		245.00
143536 6/15/2020 WIP Call with client; finalize edits to demand letter; email co-counsel	M. Herrington Settlement Kelly, Ronald	0.40 0.00	350.00 T@1		140.00
145385 7/1/2020 WIP Draft complaint; review client documents provided; provide draft of complaint to co-counsel for review	M. Herrington Compl_COIP_Ser Kelly, Ronald	1.60 0.00	350.00 T@1		560.00
145386 7/1/2020 WIP Communication with Bagby re: admission procedures in NDGA; review NDGA admission and pro hac procedures	M. Herrington Misc Kelly, Ronald	0.20 0.20	350.00 T@1 Do Not Bill		70.00
145387 7/2/2020 WIP Revise COIP per new firm format; review Local Rules for requirements; contact CRB re: changes	M. Herrington Compl_COIP_Ser Kelly, Ronald	0.20 0.20	350.00 T@1 Do Not Bill		70.00
144141 7/7/2020 WIP Draft COIP; electronically file COIP; create service package; email process server	S. Toenes Compl_COIP_Ser Kelly, Ronald	0.85 0.00	125.00 T@1		106.25

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DeLong Caldwell Bridgers Fitzpatrick & Benjamin, LLC
--DCBFB Fee App Time Listing by Date

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Slip ID Dates and Time Posting Status Description	Timekeeper Activity Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
145388 7/8/2020 WIP Communication with co-counsel and SMT re: service issues	M. Herrington Compl_COIP_Ser Kelly, Ronald	0.20 0.20	350.00 T@1 Do Not Bill	70.00
144147 7/9/2020 WIP Electronically file Proof of Service; calendar Answer due date	S. Toenes ServiceofP Kelly, Ronald	0.20 0.00	125.00 T@1	25.00
144228 7/24/2020 WIP Discussion with MH re: preparing Motion for Extension of time for Answer; file review; drafted Motion and proposed Order, edited, finalized and filed with Court; emails to and from MH	J. Sorrenti Motions Kelly, Ronald	0.90 0.00	165.00 T@1	148.50
144498 8/13/2020 WIP Emails to and from MH; revie of notice of appearance,	J. Sorrenti Misc Kelly, Ronald	0.10 0.00	165.00 T@1	16.50
144561 8/18/2020 WIP Review settlement correspondence from Defendant; Call with client and co-counsel to discuss settlement offer and settlement strategy	M. Herrington Settlement Kelly, Ronald	0.30 0.00	350.00 T@1	105.00
144563 8/18/2020 WIP Discuss settlement process and provide Plaintiff's leaning release to Herrington.	C.R. Bridgers Settlement Kelly, Ronald	0.10 0.00	425.00 T@1	42.50
144566 8/18/2020 WIP Drafting settlement agreement; discuss terms with CRB	M. Herrington Settlement Kelly, Ronald	1.40 0.00	350.00 T@1	490.00
144628 8/20/2020 WIP Finalize settlement offer	M. Herrington Settlement Kelly, Ronald	0.70 0.00	350.00 T@1	245.00

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--DCBFB Fee App Time Listing by Date

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Slip ID Dates and Time Posting Status Description	Timekeeper Activity Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
144750 8/25/2020 WIP Communications with Def.; discuss settlement issues with CRB and co-counsel; draft revised version of settlement with fees to be determined by court.	M. Herrington Settlement Kelly, Ronald	1.30 0.00	350.00 T@1	455.00
144808 8/25/2020 WIP Review settlemet agreement.	C.R. Bridgers Settlement Kelly, Ronald	0.36 0.00	425.00 T@1	153.00
144865 8/25/2020 WIP Begin drafting fee petition and declarations	M. Herrington Settlement Kelly, Ronald	1.60 0.00	350.00 T@1	560.00
144878 9/1/2020 WIP Respond to Herrington re motion to approve settlement.	C.R. Bridgers Settlement Kelly, Ronald	0.10 0.00	425.00 T@1	42.50
144967 9/3/2020 WIP Drafting settlement motion; research on flsa settlement approval where there is no compromise.	M. Herrington Settlement Kelly, Ronald	1.30 0.00	350.00 T@1	455.00
145281 9/17/2020 WIP Finalize draft of motion for approval	M. Herrington Motions Kelly, Ronald	0.30 0.00	350.00 T@1	105.00
145282 9/17/2020 WIP Draft fee petition	M. Herrington Motions Kelly, Ronald	1.80 0.00	350.00 T@1	630.00
145298 9/18/2020 WIP Continue drafting fee petition	M. Herrington Motions Kelly, Ronald	0.50 0.00	350.00 T@1	175.00
145335 9/18/2020 WIP Continue drafting motion for fees; begin declarations	M. Herrington Motions Kelly, Ronald	2.40 0.00	350.00 T@1	840.00

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Slip ID Dates and Time Posting Status Description	Timekeeper Activity Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
145342 9/18/2020 WIP Pull reports from TS for Motion for Attorneys Fees	S. Toenes Settlement Kelly, Ronald	0.20 0.00	125.00 T@1	25.00
145380 9/21/2020 WIP Continue work on fee petition, finalize.	M. Herrington Motions Kelly, Ronald	1.30 0.00	350.00 T@1	455.00
145381 9/22/2020 WIP Draft declarations; consult with co-counsel on motion for approval and fee petition; finalize for filing.	M. Herrington Motions Kelly, Ronald	1.20 0.00	350.00 T@1	420.00
Grand Total		<hr/> <hr/>	<hr/> <hr/>	
	Billable	21.21		6999.25
	Unbillable	0.60		210.00
	Total	21.81		7209.25

ATTACHMENT B

Selection Criteria

Slip.Classification Open
Slip.Slip Type Expense
Clie.Selection Include: Kelly, Ronald

Date	Description (first line)	Timekeeper	Rate Type
Status		Activity	Slip Value
		Client	
7/1/2020	EXP Billable Filing of Complaint	W & H Project \$Filing Fee Kelly, Ronald	\$400.00
7/8/2020	EXP Billable Service Fee	W & H Project \$Service Fee Kelly, Ronald	\$175.00
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Grand Total			\$575.00
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